

This letter discusses the different tax treatment of sales of mobile homes. See 130.1940. (This is a GIL.)

March 3, 2004

Dear Xxxxx:

This letter is in response to your fax dated March 1, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am sending this as a follow-up to our conversation earlier today. I have been a Mobile Home Dealer in Illinois for a number of years. I have recently been put in a position that requires I obtain an expert opinion from the Department of Revenue.

I have sold a number of new Mobile Homes, that as part of the sale my dealership installed these homes permanent foundations. By installed I mean we blocked, leveled, removed the axles, tires, and hitches, tied down and connected all utilities to these homes. The foundations on these homes were below frost level. These homes become part of the real estate and are taxed as such.

These homes were purchased from manufacturers outside Illinois and no sales tax was paid prior to these sales.

My questions to you are, how do I report these sales? Do I report these sales on St-556 or St-1 forms? I originally reported these sales on St-556 forms, do I need to file an amended form and change this reporting to a St-1 form?

The Illinois Secretary of State Police are insisting that I apply for titles for these homes. I have been told by a number of persons with-in the Illinois State

Government that title are not required for these homes since they have been made a part of the real estate? Who is correct?

DEPARTMENT'S RESPONSE:

Please find enclosed copies of 86 Ill. Adm. Code 130.1940 and 130.2075 regarding the tax liabilities of contractors in Illinois. The term construction contractors includes general contractors, subcontractors, and specialized contractors such as landscape contractors. The term contractor means any person or persons who are engaged in the occupation of entering into and performing construction contracts for owners. In Illinois, construction contractors are deemed end users of tangible personal property purchased for incorporation into real property. As end users of such tangible personal property, contractors incur Use Tax liability for such purchases based upon the cost price of the tangible personal property. Therefore, any tangible personal property that general contractors or subcontractors purchase that will be permanently affixed to or incorporated into real property in this State will be subject to Use Tax. If contractors did not pay the Use Tax liability to their suppliers, contractors must self-assess their Use Tax liability and pay it directly to the Department.

Construction contractors incur Retailers' Occupation Tax liability when they engage in selling any kind of tangible personal property to purchasers without permanently affixing the tangible personal property to real estate. See 86 Ill. Adm. Code 130.1940(b)(1). Construction contractors can purchase such tangible personal property tax-free for resale by providing their suppliers with Certificates of Resale. See 86 Ill. Adm. Code 130.1405, enclosed.

Your letter describes sales of mobile homes. There are two types of sales of mobile homes that have different tax consequences. The first type of sale involves the selling of a mobile home without installation or incorporation into real estate. The second type of sale involves the sale of a mobile home that includes installation or incorporation into real estate.

If a retailer sells a mobile home without installation or incorporation into real estate, this sale must be reported on a transaction reporting return (Form ST-556). In this situation, the retailer incurs Retailers' Occupation Tax and the purchaser is liable for Use Tax on the purchase price.

In contrast, when a person permanently affixes or incorporates a mobile home into real estate, that person is acting as a construction contractor for purposes of Illinois tax law. See the enclosed copy of 86 Ill. Adm. Code 130.1940. A construction contractor is considered the end-user of the tangible personal property that he or she permanently attaches to real estate. The Department considers a mobile home to be permanently attached or incorporated into real estate when it is placed on a permanent foundation, all parts providing for the mobility of the structure have been removed, and it is hooked up to permanent plumbing and electrical systems. If the retailer makes a sale of a mobile home with permanent installation or incorporation into real estate as part of the sale, the retailer is liable for Use Tax based upon the retailer's cost price of the mobile home and the materials used to permanently affix the mobile home into the real estate. The retailer in this situation is considered a construction contractor and therefore is the taxable user of the property. Such sales are not reported on a transaction reporting return (Form ST-556). The retailer's Use Tax liability should be reported on Form ST-1 or ST-44.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not

under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Jerilynn Gorden
Sr. Counsel for Sales & Excise Taxes

Enc.